55-240 3206

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#39

In re Application of
BERNA Philippe et al
Serial No. 08/321,589
Filed: Oct. 12, 1994
For: PROCESS FOR MAKING A VERSATILE CLAMPING DEVICE DESIGNED TO HOLD OBJECTS WITHOUT DAMAGING THEM, SUCH A DEVICE AND ITS USE

Group Art Unit: 3206
Examiner: Tom Hughes

Molières-sur-Cèze, France
June 6, 1997

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137 (a)

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

The above-identified application became abandoned because a timely mailed and proper response to a final Office action dated July 3, 1995 reached too lately the Patent and Trademark Office as a result of an unusual mail delay. The period for response to this final Office action had been reset by an Advisory Action onto October 16, 1995, as the mailing date of this Advisory Action (no time was given to answer such an action). The abandonment date of this application is therefore October 17, 1995.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.
The proposed response to the above-noted final Office action in the form of a continuing application has been previously filed with adequate fee on December 29, 1995.

Enclosed are:

- payment by check drawn on the Bank of America of the fee according to 37 CFR 1.17 (1) ($55, small entity status of which the statement was previously filed).
- adequate showing of the cause of unavoidable delay in the form of a declaration.
- petition according to 37 CFR 1.183 for a waiver of the requirement that a period equivalent to the period of abandonment be disclaimed and the corresponding petition fee.
- letter of express abandonment conditional upon the granting of the petition and of a filing date to the continuing application.

Respectfully submitted.

Philippe BERNA

Dr. Philippe Jean Henri Berna
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PETITION TO GROUND

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BERNA, Philippe et al
Serial No. 08/321,589
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DECLARATION AS TO THE SHOWING OF THE CAUSE OF UNAVOIDABLE DELAY IN FILING A PROPER RESPONSE

The undersigned declares that the following statements made of his knowledge are true, and that these statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

June 6, 1997
Date

Philippe BERNA
Signature

Philippe Jean Henri Berna

Correspondence address: Mas Liotard - Les Brousses, F30410 Molières-sur-Cèze, France, Phone & fax No: (33) 4 90 85 90 81

A proper response in the form a notice of appeal and a petition for extension of time by one month with corresponding fees was airmailed (as a priority mail or in French: "courrier prioritaire" and "PR" for short) and registered to the Patent and Trademark Office as soon as on November 6, 1995 (see enclosed copy of the receipt from the French postal service). That was just a very few days after the applicant received the Advisory Action resetting to October 16, 1995 the expiration date for the period for response to the final Office Action of July 3, 1995. Should the airmail delay have been usual, i.e. no more than 6 to 8 days, this proper response should have reached the PTO well before November 16, 1995. That is why only an one-month extension fee should have been sufficient. But this response would have reached the PTO only on December 1st, 1995. Whatever would have been the reason for this unusual airmail delay (which is possibly linked to a national strike of the French postal service sorting centers that the media nevertheless announced more than a week after the mailing date of this notice of appeal), it would have been still possible to turn this untimely filing into a regular one and thus have said abandonment avoided.

Should the Application Processing Division have sent to the applicant a notification according to M.P.E.P. 509 upon the receipt of the notice of appeal on December 1st, 1995 to inform him that the fees then paid were insufficient and to give him a new time period in which to submit the remaining balance (a new time period ending on December 16, 1995 would have been consistent with the payment of the extra fee for the second-month extension), it would have been then easy for the applicant using Federal Express or the like to send a payment for a second-month extension. As the applicant got no news from the Patent Application Processing Division, he considered that everything was O.K. when he filed thru UPS a continuation application under 37 CFR 1.62 on December 29, 1995. And there was no more reaction of the Application Processing Division at this time to inform the applicant in complete disregard for M.P.E.P. 509 that the fees paid would have been insufficient despite it was then still possible to extend the period for response (until January 3, 1996) by some additional extension fees. In fact, a status enquiry letter was even necessary on June 7, 1996 with strong evidence in support to make the Application Processing Division realize that they did receive a continuous application on December 29, 1995 at 1.23 pm. Upon this enquiry, the application patent number 08/580,493 and the filing date December 29, 1995 for this continuous application were notified (by a letter from the PTO of August 22, 1996) to the applicant. So nothing could make think him that something went wrong (also because the notice of appeal had been air mailed largely before the official announcement of the strike). The applicant was completely unaware that this notice could have only arrived on December 1, 1995. For the applicant, the delay in the effective filing of the above-cited proper and timely airmailed response was not depending upon him and therefore unavoidable. From the receipt of the final Official action to the abandonment date and beyond, the applicant showed constant diligence. Within the two months following this final Official action was sent an amendment on July 12, 95 and then were filed on September 5, 95 (the labor day weekend including September the 3rd) a petition as well as separately a complete response with a substitute specification as required by the Examiner. This complete response led the Examiner to issue the Advisory actions of October 10 and 16, 95. And beyond the abandonment date were sent a notice of appeal on November 6, 95 and within the two-month period opened by this notice a continuing application on December 29, 95.

On the other hand said alleged abandonment was discovered by the PTO only at a time which is estimated (it is difficult to tell the exact date of the abandonment notification because as it can be seen on the enclosed copy of the front page of this notification it is illegible except 1997 and despite the request by fax of the applicant on March 20, 1997 no further explanation was given to him by the Special Program Law Office) to be in January 1997, i.e. more than six months of the date of said abandonment. That means that according to 37 CFR 1.137 (c) as the application for which revival is being seeked was filed before June 8, 95, an appropriate terminal disclaimer should be required. As what is exceeding six months in the period from the date of abandonment to the filing of the petition for revival is not the applicant's fault, the applicant encloses a petition according to 37 CFR 1.183 for a waiver of the requirement that a period equivalent to the period of abandonment be disclaimed. Justice

requires waiver of this requirement. The suspension of the rules provided by 37 CFR 1.183 is also seeked because the applicant was prevented from reacting as promptly as he would have liked according to 37 CFR 1.137 (a) to the notification of abandonment. Indeed the discovery of said abandonment was made unexpectedly just at a time when the applicant was starting a trying long series of trade and public shows for the promotion of clamps according to the patent application on top of a round of hobby shops which kept him away from his office over a 2-month business trip in the USA (from January 10 to March, 11, 97, see enclosed copies of the receipts of National Rental Car covering this period as an evidence) and over a second one-month business trip (from April 4 to May 5, 97) in Europe. During the period between these two business trips, a request for reconsideration of holding of abandonment in the form of a request for restoring the filing date of the new continuous application was filed on March 20, 1997 by facsimile transmission. Two months and a half were left to the PTO to react thereupon because such a delay for response from the PTO is far to be unusual (that was besides exactly the delay with which the PTO answers on August 22, 1996 to the applicant's status enquiry letter of June 7, 1996). Now this time is over, a petition for revival is filed. In the applicant's opinion, this petition was filed as promptly as possible, the more so since the USA business trip was followed by an illness (bronchitis and sinusitis) and an immense fatigue for the applicant more likely due to overworking (before the above-mentioned business trip the applicant participated to 16 shows in the USA last year on top of other ones in Europe). And these illness and fatigue lasted until recently (see enclosed copies of prescriptions from Doctors of Medecine as an evidence). But if the Special Law Program Office nevertheless judges differently, the applicant extends the above-mentioned petition under 37 CFR 1.183 to a waiver of the requirement for promptitude under 1.137 (a) because otherwise the applicants could not do any more business trips or request explanations and reconsideration of decisions from the PTO.

The applicant underlines with deference that now the PTO accepts the filing of notices of appeal by facsimile transmission should the PTO consistently accept payment of fees by credit card even with an extra charge for bank processing, the above-identified application would not have been abandoned. The applicant would have definitely selected the facsimile transmission to send this notice of appeal because such a way is much cheaper, simpler and safer than mailing. As a result, the burden of application revival would be currently avoided both for the PTO and the applicant. On top of this, the PTO would have been credited with the fees much earlier.

Enclosures: evidence pieces supporting this declaration

Philippe BERNA